

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MATTHEW M. PHLIPOT,	§
	§ No. 573, 2010
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for Sussex County
	§ Cr. ID No. 0903021873
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: April 20, 2011

Decided: May 3, 2011

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**O R D E R**

This 3rd day of May 2011, it appears to the Court that:

(1) The defendant-appellant, Matthew M. Phlipot (“Phlipot”), filed this appeal from his final judgments of conviction in the Superior Court for: two counts of Rape in the Fourth Degree, six counts of Tampering with a Witness, and twenty-seven counts of Criminal Contempt. In this direct appeal, the only issue raised by Phlipot is that the Superior Court erred in denying his motion to sever the trial on the initial rape charges from the trial on the non-rape charges, which were: Tampering with a Witness, Criminal Contempt, and Falsely Reporting an Incident. We find no merit in Phlipot’s arguments. Accordingly, we affirm the judgments of the Superior Court.

(2) K.K. was a seventeen year old student who Phlipot met while working as a volunteer basketball coach at her school. The record reflects that on January 18, 2009, K.K. ran away from home and stayed at a friend's house for a week. K.K. testified that she and Phlipot, who was thirty-two at the time, had sexual intercourse several times during that week.

(3) Phlipot assisted K.K.'s plan to run away by driving her to a train station so that she could travel to Chicago. On January 30, 2009, authorities found K.K. on a train in West Virginia. They removed her from the train and she spent a few days in a juvenile detention center before her family came to pick her up. Upon K.K.'s return to Delaware, she was interviewed by detectives about her relationship with Phlipot. During those interviews, K.K. denied having sex with Phlipot because she loved him and "didn't want him to get into trouble."

(4) On February 27, 2009, Phlipot pled guilty in Family Court to Endangering the Welfare of a Child for his role in helping K.K. run away. The Family Court ordered Phlipot to have no further contact with K.K. There were no other charges brought against Phlipot at that time because he was initially successful in convincing K.K. not to reveal their sexual relationship.

(5) After talking with her grandmother and a counselor, K.K. returned to speak with police on March 18, 2009, and admitted that her previous denials about having sex with Phlipot had been untruthful. On March 31, 2009, Phlipot was arrested and charged with four counts of Rape in the Fourth Degree. In violation of the Family Court order, Phlipot continued seeing, calling, and e-mailing K.K. Many of the e-mails were written in an attempt to convince K.K. not to tell anyone about her sexual relationship with Phlipot and to discourage her from testifying against him. After obtaining these e-mails, the State re-indicted Phlipot and included six additional counts of Tampering with a Witness, twenty-seven counts of Criminal Contempt, and one count of Falsely Reporting an Incident.<sup>1</sup>

(6) Phlipot filed a motion to sever the non-rape charges in the re-indictment from the original four counts of rape. The Superior Court denied the motion on the grounds that the separate offenses were logically relevant to each other and that the evidence would be admissible at separate trials as corroboration of the original offenses and evidence of intent.

(7) After a three day trial, the jury returned a verdict of guilty on two of the rape charges and not guilty on the remaining two rape charges.

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<sup>1</sup> At trial, the State introduced this series of e-mails between Phlipot and K.K. The charges for Tampering with a Witness and Criminal Contempt each correspond to an individual e-mail.

Phlipot was sentenced to five years imprisonment at Level 5 on each of the rape charges, followed by six months Level 4 home confinement and two years probation. He was sentenced to eight years cumulative imprisonment suspended for probation on the six Tampering with a Witness offenses and was sentenced to a \$100 fine on each of the twenty-seven counts of Criminal Contempt.

(8) In this appeal, Phlipot argues that the Superior Court abused its discretion by ruling that the non-rape offenses, that allegedly occurred after the originally charged offenses of rape, would not be severed for purposes of trial. Specifically, he contends that the non-rape charges should have been severed because they are not similar to the rape charges, that they took place after the rape charges, and that they had no logical relationship to the rape charges. The record does not support those arguments.

(9) Under Superior Court Criminal Rule 8, two or more offenses may be charged in the same indictment if the offenses are of the same or similar character or are based on the same acts or transactions constituting parts of a common scheme or plan.<sup>2</sup> The Superior Court found that all but the false reporting charge occurred within two months of the rapes.<sup>3</sup> The witness tampering charges, by their very nature, relate directly to the alleged

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<sup>2</sup> Super. Ct. Crim. R. 8.

<sup>3</sup> The false reporting charge occurred four to five months after the rapes.

sexual contact between Phlipot and K.K., which forms the basis for the rape charges. In the e-mails that were admitted into evidence, Phlipot encouraged K.K. not to testify against him and refers to their sexual activity. The criminal contempt charges are also based on a series of e-mails which indicate a sexual relationship between Phlipot and K.K. Therefore, the alleged non-rape offenses are logically related to the sexual activity that is the basis for the rape charges and they were properly brought in the same indictment under Superior Court Criminal Rule 8.

(10) Under Superior Court Criminal Rule 14, the court may sever the offenses and order separate trials even though the offenses were properly joined in the same indictment if it appears that the defendant will be prejudiced by the joinder.<sup>4</sup> Phlipot asserts that the non-rape charges should have been severed because joinder of all of the offenses created a risk that the jury would cumulate all of the evidence and infer a general criminal disposition on his part. In *Weist v. State*, we held that the denial of a motion to sever results in an abuse of discretion when there is a reasonable probability that substantial prejudice may result from a joint trial. In such situations the court must sever the joined offenses.<sup>5</sup>

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<sup>4</sup> Super. Ct. Crim. R. 14.

<sup>5</sup> *Weist v. State*, 542 A.2d 1193, 1195 (Del. 1988).

(11) The record does not support Phlipot's claims of substantial prejudice by joinder. The e-mails that formed the basis for the witness tampering and criminal contempt charges would have been admissible at trial on the rape charges because they provide additional evidence of Phlipot's sexual relationship with K.K., corroborate K.K.'s testimony, and contain admissions by Phlipot. Accordingly, we hold that the Superior Court did not abuse its discretion in denying Phlipot's motion to sever.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice